

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of an Application by
CenterPoint Energy for Authority to
Increase Natural Gas Rates in Minnesota

ORDER GRANTING INTERVENTION

On February 10, 2009, the Minnesota Mechanical Contractors Association (MMCA) filed a Petition to Intervene in this proceeding with the Administrative Law Judge. On February 17, 2009, Applicant CenterPoint Energy responded, objecting to the intervention petition. MMCA replied to CenterPoint's objections on February 26, 2009.

None of the other parties responded to MMCA's petition to intervene.

MMCA has met the criteria set forth in Minn. R. 1400.6200 for a limited intervention. For the reasons set forth in the accompanying memorandum, incorporated herein,

IT IS HEREBY ORDERED:

1. The Minnesota Mechanical Contractor's Association's petition to intervene in this proceeding is GRANTED, subject to the limitation set forth in paragraph 2 of this Order:

2. MMCA's participation shall be limited to participation regarding CenterPoint's allocation of costs and resources between its regulated and non-regulated businesses. Discovery or questioning by MMCA beyond the scope of this limitation will be subject to objection.

3. The ALJ's Service List shall be amended to reflect the additional Intervenor. A corrected version is attached hereto.

Dated this 9th day of March, 2009

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

Applicable Standard for Granting Intervention

The rules governing intervention procedures and standards for proceedings before the Public Utilities Commission require that “[d]uring the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the Administrative Law Judge (ALJ).”¹ The rules adopted by the Office of Administrative Hearings (OAH) include standards for assessing petitions for intervention. A petition to intervene must demonstrate “how the petitioner’s legal rights, duties or privileges may be determined or affected . . . how the petitioner may be directly affected by the outcome . . . [and] shall set forth the grounds and purposes for which intervention is sought. . . .”² The administrative law judge must allow intervention “upon a proper showing pursuant to subpart 1 unless the judge finds that the petitioner’s interest is adequately represented by one or more parties participating in the case.”³

MMCA’s Intervention

The MMCA states that its members, who are piping contractors, directly compete with CenterPoint’s Home ServicePlus repair and maintenance services. That competition, MMCA argues, “may be impacted by CenterPoint’s allocations between its regulated business and its non-regulated Home ServicePlus” services. MMCA wants to insure “full and accurate exploration of the costs allocated to ratepayers.”

CenterPoint responds that “the Petition does not specifically identify any rights of MMCA that could be affected by these proceedings. . . .” CenterPoint points out that the PUC established accounting procedures for CenterPoint and its non-regulated business years ago.

MMCA’s asserted interest is an economic one. “[A]s a general rule, competitors or persons with a special economic interest are entitled to intervene in licensing proceedings”⁴ Furthermore, “[a]n economic interest is sufficient if it involves only a potential competitor”⁵ Although this is not a licensing proceeding, the principal is the same. MMCA’s claimed economic interest is sufficient to satisfy the requirements of Minn. R. 1400.6200, subp.1. Its knowledge concerning home maintenance and repair put it in a position of unique expertise in connection with CenterPoint’s allocation of costs between its regulated business and its Home ServicePlus business. MMCA’s interests may not be adequately represented by the Office of Energy Security. Because

¹ Minn. R. 7829.0800 subp. 6 (2005).

² Minn. R. 1400.6200, subp. 1 (2005).

³ Minn. R. 1400.6200, subp. 3 (2005).

⁴ Beck, *Minnesota Administrative Procedure*, § 6.2.6 at 82 (2d ed.1998), *citing, inter alia, Minnesota Loan & Thrift v. Commerce Comm’n.*, 278 N.W.2d 522 (Minn. 1979).

⁵ *Id.*, *citing Marine Space Enclosures v. Federal Maritime Comm’n*, 420 F.2d 577, 590=91 (D. C. Cir. 1969).

MMCA has made a showing that it meets the requirements of Rule 1400.6200, it is appropriate to grant the petition for intervention.⁶

Limitations on Intervention

Minnesota Rule part 1400.6200, subpart 3 requires that an order allowing intervention “shall specify the extent of participation permitted the petitioner and shall state the judge’s reasons.” One of the options defining “extent of participation” is to permit a petitioner to “intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.” In this instance, the Administrative Law Judge is so limiting MMCA’s participation. While MMCA’s intervention may legitimately inform the proceedings to the extent that it sheds light on CenterPoint’s allocation of costs, this is not the proper forum for resolving any disputes between CenterPoint and MMCA concerning the competition between Home ServicePlus and MMCA’s constituent members. The purpose of the proceeding before the PUC and this ALJ is to consider CenterPoint’s rate increase request. To the extent that MMCA develops or provides evidence about cost CenterPoint’s allocation, that will be potentially relevant to the question of the reasonableness of CenterPoint’s application for a rate increase. MMCA’s petition did not demonstrate that it has any interest, or expertise, to participate in this matter beyond the narrow scope defined in this order.

S.M.M.

⁶ In its February 24 Reply Memorandum, MMCA argues that the ALJ’s analysis should first focus on whether granting its petition will drastically alter the proceedings or adversely impact the present parties. While these may be considered as secondary factors, the primary factors the ALJ must consider are those set forth in Minn. Rule 1400.6200 as discussed above. Mere timeliness is not sufficient to justify granting a petition for intervention.